

E-FILED - 5/22/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BARTOLO MULLEN,) No. C 07-6250 RMW (PR)
Plaintiff,)
v.) ORDER OF DISMISSAL
ED FOULK, et al.,)
Defendants.)

Plaintiff, proceeding pro se, filed the instant civil rights complaint pursuant to 42 U.S.C. § 1983 concerning the conditions of his confinement at Napa State Hospital. Plaintiff has been granted leave to proceed in forma pauperis in a separate order. On January 23, 2008, plaintiff filed a response to the court's order granting leave to proceed in forma pauperis. In his response, plaintiff states that the claims set forth in the instant complaint are the same claims against the same defendants that he included in his second amended complaint in his earlier civil rights action, in case no. C 03-3676 RMW (PR). Plaintiff explains that he filed the instant complaint before he was granted leave to file a second amended complaint in his 2003 civil rights action.

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1 Accordingly, the instant complaint is DISMISSED without prejudice because it
2 contains the same claims against the same defendants as set forth in plaintiff's pending
3 second amended complaint in case no. C 03-3676 RMW (PR). The clerk shall terminate
4 any pending motions and close the file. The court will review plaintiff's second amended
5 complaint in case no. C 03-3676 RMW (PR) in a separate written order.

6 IT IS SO ORDERED.

7 DATED: 5/22/08



8 RONALD M. WHYTE
9 United States District Judge

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